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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: MAR 03 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Peru who was found to be inadmissible to the United States (U.S.) under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1991. The applicant is married to a U.S. lawful permanent resident and he seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and to adjust his immigration status to that of a lawful resident.

The district director concluded the applicant had failed to establish that his U.S. citizen wife would suffer extreme hardship if he were removed from the United States. The application was denied accordingly.

On appeal, counsel asserts that the applicant has been married to his wife (Mrs[redacted] for seven years, and that, although she is also a native of Peru, she has lived in the United States for more than 20 years, and rarely visits her native country. Counsel asserts the district director erred in not finding that the cumulative hardship factors in the applicant's case establish that Mrs[redacted] would suffer extreme emotional and financial hardship if the applicant were removed from the United States.[1]

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now, Secretary, Homeland Security "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States

[1] The AAO notes that the record also contains references to the hardship that the applicant's children would suffer if the applicant were removed from the United States. Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a U.S. citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered.

citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Counsel asserts that Mrs [redacted] would suffer extreme emotional and financial hardship if she moved to Peru with her husband. Counsel asserts that although Mrs [redacted] is a native of Peru and still has some family members there, including her mother, one sister and four brothers, Mrs. [redacted] has lived in the U.S. for more than 20 years, and her significant family ties are to the five U.S. citizen and permanent resident sisters that reside in the United States. The record reflects that Mrs [redacted] is especially close to one sister and her family, and that the two families get together several times a week for family gatherings. Counsel asserts that Mrs. [redacted] would suffer extreme emotional hardship if she were to move away from the U.S. and from her sisters and their families in the United States.

Counsel asserts further that Mrs [redacted] would suffer financial hardship if she moved with her husband to Peru. Counsel asserts that, in general, the economic conditions are very bad in Peru, and that although the applicant and her husband have some family members in Peru, none of their family members would be in a financial position to help the applicant and her husband. Counsel additionally asserts that it is unlikely that the applicant or Mrs. [redacted] would be able to support their own family in Peru because the applicant's profession as an auto mechanic and Mrs [redacted] profession as a house cleaner, would not allow them to earn much money.

Alternatively, counsel asserts that Mrs [redacted] would suffer extreme emotional and financial hardship if she remains in the U.S. without her husband because she loves and would miss her husband and because she would probably live at the poverty level and be unable to pay home mortgage or basic living expenses without his financial help.

The AAO notes that although counsel asserts that Mrs. [redacted] earns approximately $10,000 a year from her home cleaning business, income tax and immigrant visa, affidavit of support evidence contained in the record indicates that Mrs. [redacted] earnings are based on work as a substitute teacher for the Montgomery, Maryland public school system. The AAO additionally notes that the record contains evidence indicating that in 1992, Mrs [redacted] was awarded $300/month in child support payments from her first child's natural father.

The AAO finds that the applicant has failed to establish that his wife would suffer hardship beyond that normally experienced by family members if he were removed from the U.S. and Mrs. [redacted] remained here. The evidence fails to establish that Mrs. [redacted] has any psychological or health conditions, or that any other circumstances exist that would cause her to suffer emotional hardship beyond that normally suffered upon the removal of a family member. Moreover, the record indicates that in addition to receiving some child support

payments for her first son and receiving earnings from a home cleaning business, Mrs. [redacted] works as a substitute teacher for the Montgomery County, Maryland public school system.

The AAO additionally finds that the applicant has failed to establish that Mrs. [redacted] would suffer extreme emotional or financial hardship if she moved to Peru with her husband. The AAO notes that Mrs. [redacted] is originally from Peru and that her mother and several siblings live in Peru. The AAO finds that the applicant has not established that her relationship with her sisters in the United States is of such a nature that it would cause her emotional hardship beyond that normally experienced by family members upon the removal of an alien. Moreover, the AAO does not find that the generalized statements regarding the economy in Peru and the possibility of financial hardship there, establishes that Mrs. [redacted] would suffer financial hardship that is unusual or beyond that usually expected upon the removal of an alien.

The AAO notes that in *Shooshtary v. INS,* 39 F.3d 1049, 1051, (9th Cir. 1994), the Ninth Circuit Court of Appeals stated that, "[t]he uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported". The Ninth Circuit stated further that the extreme hardship requirement "[w]as not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." *Id.* Moreover, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship if his waiver of inadmissibility is not granted. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.